

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

KIRK D. JENKINS

Plaintiff,

v.

Civil Action No. 2:07CV-263-J

**NATIONAL BOARD OF MEDICAL
EXAMINERS,**

Defendant.

PLAINTIFF'S TRIAL BRIEF ON ADMISSIBILITY OF AFFIDAVITS

To the Honorable United States District Court Judge Mary Lou Robinson:

Kirk D. Jenkins ("Jenkins"), Plaintiff herein, files this Trial Brief on the Admissibility of Affidavits and shows the Court the following:

Introduction

The affidavits offered by the plaintiff as evidence in conjunction with this preliminary injunction hearing are admissible at this stage of the proceedings and should be considered by the Court.

Authorities

It is well settled that hearsay evidence, including affidavits are admissible at a preliminary injunction hearing. *Sierra Club, Lone Star Chapter v. FDIC*, 992 F.2d 545, 551 (5th Cir. 1993); *Healthpoint, Ltd. v. Stratus Pharmaceuticals, Inc.*, 273 F.Supp.2d 769, 777 (W.D. Tex. 2001) (stating "[e]vidence at a hearing on a preliminary injunction need not be 'testimonial' and affidavits can be considered by the Court"). In *Sierra Club*, the Court stated,

[A]t the preliminary injunction stage, the procedures in the district court are less formal, and the district court may rely on otherwise inadmissible evidence,

including hearsay evidence. Thus, the district court can accept evidence in the form of deposition transcripts and affidavits.

992 F.2d at 551 (citations omitted). Therefore, the affidavits submitted by the plaintiff are properly before the court and should be considered in conjunction with the plaintiff's request for a preliminary injunction, or in the alternative, for temporary restraining order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing pleading was served on Defendant on this 11th day of December, 2007 by facsimile transmission as follows:

Via Facsimile 215.590.9422

Catherine Farmer
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